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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,020	10/02/2003	Tetsuya Isobe	KAS-192	6446

7590 01/24/2007
MATTINGLY, STANGER & MALUR, P.C.
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EXAMINER

TURK, NEIL N

ART UNIT	PAPER NUMBER
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1743

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/676,020	Applicant(s) ISOBE ET AL.	
	Examiner Neil Turk	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/2/03, 6/15/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

Claim 7 is objected to because of the following informalities: The language in reciting the mechanism for selectively using one of the tools is awkward and not clearly stated, most notably in the recitation of "...depending on the type of the reagent bottle with the seal to be pierced". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the various mechanisms carry out their intended functions without any recitation to the structural elements, such as control elements and other structural elements, that could possibly control operations and have them occurring at certain times. In claim 7, it is unclear what structural elements in the mechanism allow for selectively using one of the seal piercing tools depending on the type of reagent bottle. The functional language drawn to the various mechanisms in the claims does not set forth the structural limitations needed for such functions to occur.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 recites that the seal piercing tool is provided in plural and there is a further mechanism for selectively using one of the seal piercing tools depending on the type of the reagent bottle with the seal to be pierced. As the claim is recited, there are a plural amount of the same seal piercing tool, so it is unclear why and how a mechanism would selectively choose a piercing tool based on the type of reagent bottle. If the seal piercing tools are all the same, there is no differentiation in their use for piercing any type of reagent bottle.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelln (WO 94/02826).

Kelln discloses an automatic chemical analyzer that includes a turntable 11 rotatably mounted, with disposable cuvettes 10 releasably mounted to the turntable

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(page 3, line 34 – page 4, line 4, fig. 1, 7). Kelln also discloses an optical system 14 is provided adjacent the turntable for performing analytical tests on the contents of the cuvettes, and also that there is another analytical means in the form of an Ion Specific Electrode module 38 within the chemistry instrument 24. Kelln further disclose that a tray 15 is rotatably mounted on a second vertical axis and includes reagent bottles 25. Kelln discloses that a probe arm 17 is movable about a third vertical axis and supports a downwardly-extending open pipette 18, which is movable along the path about the third axis to transfer liquid from a container to a cuvette (page 3, lines 5-35, fig. 1). Kelln also discloses that a sample tube entry port 20 is provided on the framework for receiving and supporting successive individual draw tubes 27. Kelln discloses that the draw tubes are sealed by a closure and sample tube entry port 20 supports each draw tube while pipette 18 pierces the closure 162 to access liquid sample from the interior. Kelln further discloses that puncturing means are provided within the sample tube entry port 20 for temporarily forming an opening through a closure on a draw tube (page 4, lines 1-35, figs. 16-28). Kelln discloses that a ram positioned below the puncturing means receives and orients a draw tube relative to the puncturing means to form a temporary opening through the draw tube closure for subsequent insertion of the pipette (page 5, lines 1-6). Kelln shows in figures 16-18 the procedural movement of the parts involved during the operation. Kelln discloses that a further step in the procedure involves forward movement of cover 160 to prevent access to the draw tube and axially align puncture tube 161 above closure 162 (page 10, line 34 – page 11, line 2). Kelln discloses that a bifurcated stripper 167 selectively overlies and engages the upper

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surface of a closure 162 on a draw tube positioned within ram 140, the stripping providing so that upward movement of the closure and draw tube is prevented relative to ram 140 during the removal of the puncture tube 161 and pipette 18 (page 8, lines 3-11, figs. 18-28). Kelln discloses that as the closing movement of the cover occurs, the stripper and extension 168 will be pivoted to bring the extension into a vertical position parallel with rack 148. Kelln discloses that such positioning allows accurate positioning regardless of tube height. Kelln further discloses that the puncturing of the closure is accomplished by raising the engaged ram and extension, and then the probe arm 17 may be lowered to insert pipette 18 to draw liquid from the draw tube (page 11, lines 1-35). Kelln then discloses that after lifting of the pipette, the workstation 30 operates motor 166 to move cover 160 rearward, returning the stripper to its original position (moving puncture tube 161 back as well). Kelln also discloses that after retraction of cover 160 the ram is raised to its "home" position, where the tube clamp 146 is released and the released draw tube can be lifted and successive draw tubes can be received (page 12, lines 1-11, figs. 26-28).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Turk whose telephone number is 571-272-8914.


The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NT


Jill Warden
Supervisory Patent Examiner
Technology Center 1700